

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:21-cv-00124-MR-WCM**

**LEGACY 73 SIGNS, LLC, on the
authority of its member-managers,
David M. Smith and Jamie M. Smith,**

Plaintiff,

vs.

**GERALD LIPSCOMB, individually
and d/b/a Shytle Sign and Lighting
Service, LLC; GARY DEAN SHYTLE,
individually and as member,
co-owner and operator of Shytle
Sign and Lighting Services, LLC;
and SHYTLE SIGN AND LIGHTING
SERVICES, LLC,**

Defendants.

ORDER

THIS MATTER is before the Court on the Plaintiff's Motion to Dismiss [Doc. 12] and the Magistrate Judge's Memorandum and Recommendation [Doc. 17] regarding the disposition of that motion.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable W. Carleton Metcalf, United States Magistrate Judge, was designated to consider the Plaintiff's motion to dismiss

Defendant Lipscomb's counterclaims and to submit a recommendation for the disposition of such motion.

On November 5, 2021, the Magistrate Judge filed a Memorandum and Recommendation in this case containing conclusions of law in support of a recommendation regarding the Plaintiff's motion. [Doc. 17]. The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service. The period within which to file objections has now expired, and no written objections to the Memorandum and Recommendation have been filed.

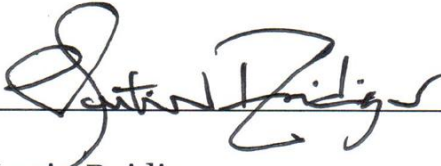
After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's recommendation regarding the pending motion.

IT IS, THEREFORE, ORDERED that the Memorandum and Recommendation [Doc. 17] is **ACCEPTED**, and the Plaintiff's Motion to Dismiss [Doc. 12] is **GRANTED IN PART** and **DENIED IN PART**. Specifically, the Motion is **GRANTED** with respect to Defendant Lipscomb's counterclaim for breach of contract to the extent that such claim is based on

the Plaintiff's alleged failure to compensate Lipscomb for hourly consulting services. In all other respects, the Motion is **DENIED**.

IT IS SO ORDERED.

Signed: December 2, 2021

A handwritten signature in black ink, appearing to read "Martin Reidinger", written over a horizontal line.

Martin Reidinger
Chief United States District Judge

